The Blameless Elevator Accident

Brian Sunohara
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Elevator accidents in Ontario are fortunately rare. When such accidents do occur, finger-pointing often ensues. However, as a recent court decision shows, sometimes no one is to blame.

Facts

In *Lebko v. Toronto Standard Condominium Corp. 1862*, 2019 ONSC 1602, the plaintiff visited a condominium building in Toronto, Ontario.

As she was in the process of exiting an elevator, she violently tripped over something and fell. She did not know what she tripped on.

A witness observed that the bottom of the elevator was not level with the floor. There was a quarter to half-inch gap. However, other people were subsequently seen to exit the elevator without incident.

As a result of the fall, the plaintiff allegedly broke her left wrist and dislocated her right shoulder.

The plaintiff sued the condominium corporation, the building management company, an elevator company, and a security company.

On a summary judgment motion, Justice C.J. Brown dismissed the plaintiff's lawsuit against all of the defendants.

Inspections of Elevator

There were complaints with the elevator in the days leading up to the incident.

Two days prior, there was a complaint of the elevator not stopping level with the floor. There were also complaints of the elevator making a squeaking noise and bouncing when stopping. The elevator was taken out of service.

On the day of the accident, an elevator technician serviced the elevator. He could not recall what work he performed. However, his usual practice was to make sure that elevators were levelling properly.

Condominium Corporation

Justice Brown held that the condominium corporation and the building manager met the duty of care. They had a reasonable system to meet their statutory and regulatory duties to keep the premises reasonably safe for visitors.

The Canadian Standards Association code requirements were satisfied. The code requirements were approved by the Technical Standards and Safety Authority.

Justice Brown noted that "where governing legislation stipulates a specific standard of care to be followed, and the defendant complies with the government standard, the plaintiff bears a 'heavy onus' to prove negligence by the defendant, notwithstanding such compliance".

Justice Brown further stated that, when an occupier demonstrates that it had a reasonable system of inspection, it will usually be inferred that the system was being followed, unless there is some evidence to the contrary.

The condominium corporation entered into service contracts to perform monthly preventative maintenance of the elevators. They also retained a security/concierge service to inspect the premises.

Justice Brown indicated that the condominium corporation and the building manager were able to successfully rely on the independent contractor defence in section 6 of the *Occupiers' Liability Act*.

Elevator Company

Justice Brown held that the elevator company was not liable. There was no evidence to demonstrate that the elevator company's maintenance regime was not code-compliant and was not being followed.

Moreover, there was no evidence that the technician who attended at the premises on the day of the incident permitted the elevator to run in an unsafe condition.

The unchallenged evidence was that the technician did not put the elevator back into service until he was satisfied that it was safe to do so.

In addition, the alleged mis-levelling was "barely negligible".

Security Company

Lastly, Justice Brown found that the security company was not liable. After receiving complaints with the elevator, the security company took the elevator out of service and notified the superintendent. The security company did everything required of it.

Conclusion

Although the plaintiff's accident was unfortunate, no one was legally to blame.

Perfection is not required of an occupier. An occupier is not a guarantor or insurer of a visitor's safety. The standard is reasonableness. An occupier needs to ensure that its premises are reasonably safe.

According to Justice Brown, as long as an occupier has a reasonable system of inspection, it will usually be inferred that the system was being followed, unless there is some evidence to the contrary.

When an accident occurs, the onus is on the plaintiff to prove that some act, or failure to act, caused the injury complained of. There is no presumption of negligence against an occupier.

When an occupier complies with a government standard, it is very difficult for a plaintiff to prove negligence.

If an occupier retains a competent contractor to perform necessary work, then the occupier can rely on the independent contractor defence in the *Occupiers' Liability Act*, which is a complete defence.